

MONTANA LEGISLATIVE HISTORY

BEST COPY
AVAILABLE

Chapter 378 19 2003

Bill H 130 S _____ Original bill & history / c

H. Committee on Bus + Labor

S. Committee on Bus + Labor

Hearing Date(s) 1/10 / c

Hearing Date(s) 2/18 / c

Exec. Action 1/24 / c

Exec. Action 3/24 / c

_____ c

_____ c

_____ c

_____ c

Date Out _____ c

Did this bill originate in an interim committee? _____ Yes / No

Committee _____

Report _____

2003 Montana Legislature

About Bill -- Links



HOUSE BILL NO. 130
INTRODUCED BY LEWIS
BY REQUEST OF THE STATE AUDITOR

AN ACT REVISING THE PROMPT PAY PROVISIONS FOR INSURERS; MODIFYING THE DEFINITION OF "PROOF OF LOSS"; DEFINING "CLAIM DOCUMENTATION"; REVISING THE TIME PERIOD FOR PAYMENT OF CLAIMS BY AN INSURER; REQUIRING PROMPT PAYMENT OF MOTOR VEHICLE DAMAGE CLAIMS; REVISING THE ADMINISTRATIVE PENALTY PROVISIONS FOR FAILURE OF AN INSURER TO PROMPTLY PAY CLAIMS; PROVIDING THAT COMPLIANCE OR NONCOMPLIANCE WITH PROMPT PAYMENT REQUIREMENTS MAY NOT BE USED AS A BASIS FOR PRIVATE CAUSE OF ACTION OR ADMISSIBLE AS EVIDENCE IN A PRIVATE ACTION; AND AMENDING SECTIONS 33-18-231, 33-18-232, AND 33-18-233, MCA.

AN ACT REVISING THE PROMPT PAY PROVISIONS FOR INSURERS; MODIFYING THE DEFINITION OF "PROOF OF LOSS"; DEFINING "CLAIM DOCUMENTATION"; REVISING THE TIME PERIOD FOR PAYMENT OF CLAIMS BY AN INSURER; REQUIRING PROMPT PAYMENT OF MOTOR VEHICLE DAMAGE CLAIMS; REVISING THE ADMINISTRATIVE PENALTY PROVISIONS FOR FAILURE OF AN INSURER TO PROMPTLY PAY CLAIMS; PROVIDING THAT COMPLIANCE OR NONCOMPLIANCE WITH PROMPT PAYMENT REQUIREMENTS MAY NOT BE USED AS A BASIS FOR PRIVATE CAUSE OF ACTION OR ADMISSIBLE AS EVIDENCE IN A PRIVATE ACTION; AND AMENDING SECTIONS 33-18-231, 33-18-232, AND 33-18-233, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-18-231, MCA, is amended to read:

"33-18-231. State administrative process to provide timely payment of ~~medical benefits~~ medical benefits -- definitions. In 33-18-231 through 33-18-235 the following definitions apply:

(1) "Claim documentation" means standard claims forms or other documentation routinely accepted by insurers as proof of loss.

~~(4)(2)~~ "Insurer" means ~~any insurer as that term is defined by this title, including any fraternal benefit society, hospital service nonprofit corporation, health service corporation, nonprofit medical service corporation, nonprofit health care corporation, health maintenance organization, self insurer, or third party administrator or any other public or private, profit or nonprofit, governmental or nongovernmental individual, group, or organization that sells or offers for sale insurance policies, subscriber contracts, certificates, or agreements by which the offerer promises to pay medical benefits in any form in this state~~ any insurer as that term is defined by this title, including any fraternal benefit society, hospital service nonprofit corporation, health service corporation, nonprofit medical service corporation, nonprofit health care corporation, health maintenance organization, self-insurer, or third-party administrator or any other public or private, profit or nonprofit, governmental or nongovernmental individual, group, or organization that sells or offers for sale insurance policies, subscriber contracts, certificates, or agreements by which the offerer promises to pay medical benefits in any form in this state.

~~(2)(3)~~ "Proof of loss" means any ~~document accepted~~ claim documentation received by an insurer upon which payment of ~~benefits~~ claims is made requested."

Section 2. Section 33-18-232, MCA, is amended to read:

"33-18-232. Time for payment of claims. (1) ~~¶~~ An insurer shall pay or deny a claim within 30 days after receipt of a proof of loss, ~~the insurer has not paid the claim for benefits provided in the policy or contract or notified the insured or the insured's assignee of the reasons for failure to pay the claim in full and has not requested additional information or documents, the insured or the assignee may report the delay to the commissioner, who may then investigate to determine if the insurer has failed to pay the claim within 30 days of its receipt without good reason and, if so, whether such delay is a general course of business practice of the insurer~~ unless the insurer makes a reasonable request for additional information or documents in order to evaluate the claim. If an insurer makes a reasonable request for additional information or documents, the insurer shall pay or deny the claim within 60 days of receiving the proof of loss unless the insurer has notified the insured, the insured's assignee, or the claimant of the reasons for failure to pay the claim in full or unless the insurer has a reasonable belief that insurance fraud has been committed and the insurer has reported the possible insurance fraud to the commissioner. This section does not eliminate an insurer's right to conduct a thorough investigation of all the facts necessary to determine payment of a claim.

(2) ~~Upon the commissioner's determination that the delay is a general course of business practice and for a year thereafter unless earlier rescinded by the commissioner, all claims for benefits not paid by that insurer within 30 working days after receipt by the insurer, without good reason as determined by the commissioner, shall obligate the insurer to pay interest at 18% a year from the date the commissioner determines that the delay~~

~~become unreasonable.~~ If an insurer fails to comply with this section and the insurer is liable for payment of the claim, the insurer shall pay an amount equal to the amount of the claim due plus 10% annual interest calculated from the date on which the claim was due. For purposes of calculating the amount of interest, a claim is considered due 30 days after the insurer's receipt of the proof of loss or 60 days after receipt of the proof of loss if the insurer made a reasonable request for information or documents. Interest payments must be made to the person who receives the claims payment.

(3) A private cause of action under 33-18-201 or 33-18-242 may not be based on the compliance or noncompliance with the requirements of this section and evidence of compliance or noncompliance with this section is not admissible in any private action based on 33-18-201 or 33-18-242."

Section 3. Section 33-18-233, MCA, is amended to read:

"33-18-233. Administrative penalty for failure to pay promptly. (1) The commissioner may, after a hearing, impose an administrative fine as ~~set forth in subsection (2)~~ provided in 33-1-317 on an insurer if ~~he~~ the commissioner finds that the insurer as a general course of business practice in this state fails to:

- (a) use due diligence in processing all claims;
- (b) pay claims in a timely manner;
- (c) provide proper notice, when required, with respect to the reasons for the insurer's failure to make claim payments when due; ~~or~~
- (d) pay, without just cause, proper claims arising under coverage provided by its policies, whether ~~such~~ the claims are in favor of an insured, in favor of a third person with respect to the liability of an insured to ~~such~~ the third person, or in favor of any other person entitled to the benefits of a policy; or
- (e) pay interest pursuant to 33-18-232(2).

~~(2) The administrative penalty imposed for violations of 33-18-231 through 33-18-235 may not exceed \$1,000 for each separate violation.~~

~~(3)(2)~~ (2) If an insurer can demonstrate that it has consistently paid 90% of the total dollar amount outstanding in claims to each claimant within 20 working days and all of the amount within 30 working days of receipt of claims during the 6-month period immediately preceding the hearing date, the insurer is not subject to the fine ~~imposed under subsection (2)~~ described in subsection (1)."

Section 4. Prompt payment of motor vehicle damage claims. (1) Except for providers who are prepaid or agree to a different payment schedule, an insurer shall make an offer to pay or shall pay all approved claims for covered services or damages that solely involve the recovery of property damages in an amount of \$2,500 or less arising out of the ownership, maintenance, or use of a motor vehicle within 30 working days of receipt of a

proof of loss that is correctly completed and submitted to the insurer.

(2) Subsection (1) does not apply to an insurer who has notified the insured or the insured's assignee of the reasons for the insurer's failure to pay the claim in full or to an insurer that has made a reasonable request for additional information or documents.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 33, chapter 18, and the provisions of Title 33, chapter 18, apply to [section 4].

- END -

Latest Version of HB 130 (HB0130.ENR)

Processed for the Web on April 10, 2003 (4:11pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the [status of this bill](#) for the bill's primary sponsor.

[Status of this Bill](#) | [2003 Legislature](#) | [Leg. Branch Home](#)

[This bill in WP 5.1](#) | [All versions of all bills in WP 5.1](#)

[Authorized print version w/line numbers \(PDF format\)](#)

Prepared by Montana Legislative Services

(406) 444-3064

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on January 10, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 130; HB 169; HB 172; HB 72
Executive Action: HB 172; HB 45; HB 182; HB 72

HEARING ON HB 130

Opening Statement by Sponsor: REP. DAVE LEWIS, HD 55, Helena, stated this bill with the amendment is a bill that addresses a situation in which an insurance company receives a claim that is in good order; and, providing payment is in a reasonable amount of time, interest on that claim must be paid. He also said some people will say this is an extreme measure which will cause problems for an insurance company. There is no penalty for delaying payment but there is a reward for early payment. This bill therefore is an attempt to address the issue for consumers and providers by trying to get some penalty involved so there will be more prompt payments. He then explained the amendments.

EXHIBIT(buh05a01)

{Tape: 1; Side: A; Approx. Time Counter: 1 - 55}

Proponents' Testimony:

Claudia Clifford, State Auditor's Office, provided testimony from Phoebe Patterson of Missoula. **Ms. Clifford** also talked about the promptness of insurance claims. It will not guarantee that all claims get paid in the time laid out in the bill. But what it will do is give resolution to consumers and to providers to whether an insurance company has decided they should pay the claim right away or whether there is a legitimate reason which they will need to state for not paying the claim. Then the dispute and conversation becomes focused on that reason. In increasing numbers, consumers are tired and frustrated with these delays and claims. A background of the current law was also provided.

EXHIBIT(buh05a02)

EXHIBIT(buh05a03)

{Tape: 1; Side: A; Approx. Time Counter: 35 - 45}

Betty Beverly, Executive Director, Montana Senior Citizens Association explained to the committee her claim of a fire loss.

{Tape: 1; Side: A; Approx. Time Counter: 45 - 257}

Donald Miller, Supervisor of Patient Accounts, St. Patrick Hospital, said large insurers are continuously delinquent (by several months in most cases) on over 100 claims. His request to the insurance commissioner to intercede was returned to them stating that each individual patient must file a complaint as he could not do it on their behalf. He also said this bill is good for consumers, providers and potentially could provide general fund revenue.

EXHIBIT(buh05a04)

{Tape: 1; Side: A; Approx. Time Counter: 257 - 262}

James K. Shelton, Patient Business Services Manager, Benefits Healthcare, said the revision of the Montana laws are very important to his employer. They really depend on timely payment of their claims from all healthcare providers. Companies need cash flow so they can reinvest in new technology, staffing and keep prices low in Montana to provide excellent quality care to patients. Medicare will pay claims between 14 and 20; days, Medicaid, not uncommon, will pay in 14 to 30 days. As this situation is moved up to other health insurers, claims can go up to 3 days or up to 6 months. They use a standard billing form which is acceptable by all payers. There are many reasons for nonpayment.

{Tape: 1; Side: A; Approx. Time Counter: 262 - 426}

Judy Lunceford, Director of Patient Business Service, Kalispell Regional Medical Center, attests to previous testimony. Part of their interest in this bill is to explain that many insurance companies who can pay in a timely manner, do pay in a timely manner.

{Tape: 1; Side: A; Approx. Time Counter: 426 - Tape 1, Side B; 16}

Susan Good, representing Montana Orthopedic Surgeons and Montana Neurosurgeons, said when claims are delayed and take too long to process it is a classic case of dollars at work. The dollars at work, not from the people but for the insurers. This causes undue stress on the patients that physicians she represents see on a daily basis. Doctors are small businessmen but they are sometimes a very big employer in their town. Even though payments may be delayed they don't delay paying their employees.

{Tape: 1; Side: B; Approx. Time Counter: 18 - 40}

Pat Melby, Montana Medical Association, said they liked this bill. This bill will put teeth into a prompt-payment law that is currently toothless.

{Tape: 1; Side: B; Approx. Time Counter: 40 - 45}

Janie McCall, Deaconess Billings Clinic, said she was here in support of this bill. She asked that the committee really look at the consumers part of this bill. People need to have peace of mind particularly when they are having issues of this sort.

{Tape: 1; Side: B; Approx. Time Counter: 45 - 52}

Mary Williams, Volunteer, Capital City Task Force of AARP Montana, said her reason for being here is that unreasonable delay in payment by insurance companies do affect all of the people they represent.

{Tape: 1; Side: B; Approx. Time Counter: 52 - 60}

Amy Orser, Helena, said it would be extremely helpful to small businesses' like hers to be paid for their services in the accepted 30 day turnaround instead of needing to wait six months.

EXHIBIT(buh05a05)

{Tape: 1; Side: B; Approx. Time Counter: 60 - 72}

Cort Jensen, Attorney at Law, Montana Office of Consumer Protection, said when insurance companies delay payment, it tends to affect peoples' credit ratings. Therefore a prompt payment law would alleviate the burdens for the people they care for.

{Tape: 1; Side: B; Approx. Time Counter: 72 - 81}

Bob Olson, Montana Healthcare Providers, said he had provided written comments both from Mike Foster of St. Vincent's Healthcare and MHA. He also said when hospital care is given there is very little expectation that consumers pay their bill when they are at the hospital and are walking out the door. The hospital becomes a creditor or bank. Those accounts are accounts receivable. He also provided additional testimony pertaining to this bill. All this bill is doing is putting teeth in the block.

EXHIBIT(buh05a06)

EXHIBIT(buh05a07)

{Tape: 1; Side: B; Approx. Time Counter: 81 - 136}

Opponents' Testimony:

Jacqueline Lenmark, American Insurance Association, said Montana was the only state that also permits and insured or third party claimant to bring a right of action by statute to bring an action against an insurance company for bad faith for failure to comply with 201. In that action the company is liable for actual damages for bad faith and punitive damages. Montana is far ahead of other states in terms of insuring compliance and prompt payment. Consider the negative message that this will send to all commercial insurers. This does not simply affect the payment of your health insurance claims or your auto insurance claims. This will affect medical malpractice insurance and workers' compensation unless the amendment is adopted. It affects all lines of insurance and it will send a message to those companies who want to offer insurance in Montana about the reception they might receive here.

{Tape: 1; Side: B; Approx. Time Counter: 136 - 343}

Sue Weingartner, Alliance of American Insurers, stated they oppose in this bill the removal of the general business test language in section 2 of the bill and to have a single violation be the basis of the administrative enforcement. They also oppose the proposal to serve a penalty upon a single act or admission.

{Tape: 1; Side: B; Approx. Time Counter: 343 - 376}

Greg VanHorssen, State Farm Insurance, said they oppose this bill for redundancy of statutes already on the books. They believe there are substantial penalties and substantial disincentives for companies to purposely and without reason delay payment. The law is clear on this issue. This bill will create another reason to make payments before a full analysis. Penalties of 18% are significant to some of the companies who are operating in this state. The obligation to the insured who bought the policy is a consideration the obligation.

{Tape: 1; Side: B; Approx. Time Counter: 376 - 447}

Dwight Eastman, Farmers Insurance Company, said they rise in opposition for many of the items already discussed. The language of this bill demands that payment must be made within 60 days provided there is no fraud. This is an absolute bill. Due to the nature of insurance claims it is a complex nature and 60 days sometimes can be too short a time to make an accurate decision. In order to look at all the complexity of the claims, they support a do not pass. **{Tape: 1; Side: B; Approx. Time Counter: 447 - 488}**

Larry Jones, Liberty Northwest, stated his company was the largest private workers' compensation carrier in Montana. He indicated he supports this legislation but would oppose the bill as initially drafted. He would have no opposition if the amendment excluding workers' compensation coverage were adopted.

{Tape: 1; Side: B; Approx. Time Counter: 488 - 500}

Tanya Ask, Blue Cross/Blue Shield of Montana, said she supports the amendment to this bill. They approve of the proof of loss language that the Montana Health Care Association has recommended. She also said that removing the finding of the unfair trade practice as a general course of business is their sole concern. **{Tape: 2; Side: A; Approx. Time Counter: 1 - 4}**

Denise Pizzini, New West Health Services and Montana Benefits and Health Connections, said she had additional concerns with this bill. In regard to health insurers there has been a prompt payment requirement for quite some time. She provided written testimony of her further concerns.

EXHIBIT (buh05a08)

{Tape: 2; Side: A; Approx. Time Counter: 4 - 95}

Frank Cote, Health Insurance Association of America, stated his company had some specific concerns.

{Tape: 2; Side: A; Approx. Time Counter: 95 - 142}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MORGAN asked why the insurance company would be opposed to this legislation. **Ms. Lenmark** said the answer was the same for all forms of insurance when you get into a complex insurance claim. Sometimes medical injuries are not resolved for several months. The amount of the claim would be unknown. There are already provisions under Montana law to cover this problem.

{Tape: 2; Side: A; Approx. Time Counter: 142 - 236}

REP. BITNEY asked **Mr. Olson** who the self-pay members are. **Mr. Olson's** response was that they are people who come into the hospital who have no insurance and are required to make arrangements to pay their bills personally. **Mr. Olson** then stated if a person came in with an insurance company and after a period of time the insurance company denied the benefit, the patient then becomes self pay. **REP. BITNEY** asked for the definition of "all other government payers." The answer was: Indian health service, veterans, Champas, and county accounts. **REP. BITNEY** asked if Medicare and Medicaid payments were made more quickly; and the answer was that these two systems were highly computerized. The process is streamlined.

{Tape: 2; Side: A; Approx. Time Counter: 236 - 299}

REP. MENDENHALL asked if the term "penalties" could be described in the law. **Ms. Lenmark** said there are two different sets of penalties. There is an administrative penalty that if an insurer violates the provisions of that statute with such frequency as to become a regular business practice, the State Auditor's Office can then fine the insurer in the amount of \$25,000. **REP. MENDENHALL** then asked if there were many penalties given; to which **Ms. Grandy** indicated they were very infrequent.

{Tape: 2; Side: A; Approx. Time Counter: 299 - 412}

REP. GALLIK said that several of the opponents have addressed the issue of needing additional information on the "proof of loss" and the "received" language. He asked if the amendment which has been proposed by the State Auditor's Office takes care of the situation. **Mr. Cote** said it helped this situation. He said his concern is that as the bill is currently drafted, it does not totally solve that problem. When seeing the other parts of the bill, if the health insurer asks for that additional information and never receives it, they are still required to pay a fine or deny the claim.

{Tape: 2; Side: A; Approx. Time Counter: 412 - 462}

REP. MAEDJE asked if there was any information that the insurance rates went up after this law was put into effect. **Ms.Clifford** said she did not have that information.

{Tape: 2; Side: A; Approx. Time Counter: 462 - 500}

Closing by Sponsor:

The Sponsor closed.

HEARING ON HB 45

Opening Statement by Sponsor:

REP. BOB LAWSON, HD 80, Whitefish, said the bill is being introduced by the Department of Administration regarding escrow business accounts. The bill was developed regarding problems discovered in the on-going regulation of Montana escrow businesses. He then explained the changes in the bill.

{Tape: 2; Side: B; Approx. Time Counter: 1 - 80}

Proponents' Testimony:

SEN. JOHN ESP, SD 13, Big Timber, said he supports this bill. This bill is in response to an incident that happened to some of his constituents and in his opinion it is a needed change in the law. He asked to consider the amendments that would allow more flexibility.

{Tape: 2; Side: B; Approx. Time Counter: 80 - 83}

Annie Goodwin, Commissioner of Banking and Financial Institutions, said they oversee escrow companies in Montana. This bill stems from an escrow company that the state placed under court-ordered receivership. The state received a complaint from a business in Livingston. It appeared that some payments from this escrow company had been credited to the wrong company.

Upon the state's investigation into the company, it was learned that over \$239,000 was missing from a trust account. That trust account was established for the payment of a contract for deeds.

Another \$30,000 was missing from a reserve account. This bill offers protections. She then supplied an exhibit that would outline this bill and the need for the bond as well as the need for the disbursement to be made within five days. A copy of the amendments they propose were also distributed.

{Tape: 2; Side: B; Approx. Time Counter: 83 - 145}

Cort Jensen, Office of Consumer Protection, said the bond would be a very good idea and he supports this bill.

{Tape: 2; Side: B; Approx. Time Counter: 145 - 159}

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on January 24, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 343; HB 342; HB 363 (1/20/03).
Executive Action: HB 130; HB 354; HB 122; HB 76; HB 321; HB 338; HB 363

REP. STEINBEISSER reported on the action of the subcommittee for HB 332.

{Tape: 3; Side: A; Approx. Time Counter: 87 - 105}

EXECUTIVE ACTION ON HB 130

Motion: REP. BITNEY moved HB 130 DO PASS.

Discussion:

REPS. GALLIK, MATTHEWS, BERGREN said they opposed this bill.

Motion/Vote: REP. BERGREN moved the FIRST SET OF AMENDMENTS. A roll call vote was taken. Motion passed 15-3 with REPS. STEINBEISSER, HAWK, and ROME voting no.
EXHIBIT(buh15a06)

Motion/Vote: REP. GALLIK made SUBSTITUTE MOTION THAT SECOND SET OF AMENDMENTS DO PASS. A roll call vote was taken. Motion failed 6-12 with REPS. STEINBEISSER, BITNEY, HAWK, MAEDJE, MENDENHALL, and ROME voting yes.
EXHIBIT(buh15a07)

Motion/Vote: REP. BITNEY moved HB 130 DO PASS AS AMENDED. A roll call vote was taken. Motion carried 18-0.

EXECUTIVE ACTION ON HB 354

Motion: REP. GALLIK moved HB 354 DO PASS.

Motion: REP. GALLIK moved AMENDMENTS.

Discussion:

Mr. Campbell explained the amendments.

Vote: Motion carried 18-0.

Motion/Vote: REP. KEANE moved DO PASS AS AMENDED. Motion carried 18-0.

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By CHAIRMAN DALE MAHLUM, on March 18, 2003 at 9
A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

HEARING ON HB 312

Sponsor: REPRESENTATIVE MONICA LINDEEN

Proponents: Bob Vogel, Montana School Boards Association
(MTSBA)

Opponents: NONE

Informational Witnesses: NONE

Opening Statement by Sponsor:

REPRESENTATIVE MONICA LINDEEN, HD 7, Huntley, said this bill adds amateur athletic officials to the list exempt from the unemployment insurance law. These officials are independent contractors who work for schools, local recreation departments, etc., on an as needed basis. She said last session they were exempted from workers' compensation and this is an extension of that.

Proponents' Testimony:

Bob Vogel, Montana School Boards Association, rose in support of the bill.

Questions from Committee Members and Responses:

No questions were posed by Committee members on this bill.

Closing by Sponsor:

REPRESENTATIVE MONICA LINDEEN closed.

{Tape: 1; Side: A; Counter: 3.6}

HEARING ON HB 130

Sponsor: REPRESENTATIVE DAVE LEWIS

Proponents: John Morrison, State Auditor and Commissioner of Insurance
Betty Beverly, MT Senior Citizen's Association
Donald Miller, Supervisor, Patient Accounts, St. Patrick's Hospital
Mary Williams, Capital City Task Force for AARP
Bob Olsen, MHA
Mike Foster, Three Sisters of Charities Hospitals in Montana
Pat Melby, Montana Medical Association
Jani McCall, Billings Clinic
Claudia Clifford, State Auditor's Office

Opponents: Tanya Ask, Blue Cross Blue Shield of Montana
Frank Cote, Health Insurance Assoc of America
Denise Pizzini, New West Health Services
Greg Van Horssen, State Farm
Randy Nelson, Mountain West Farm Bureau Insurance Co.
Jacqueline Lenmark, American Council of Life Insurers
Stan Kaleczyc, Burlington Northern Sante Fe
Aiden Myhre, Montana Chamber of Commerce
Jon Metropoulos, National Association of Independent Insurers & Farmers Insurance Group
Tom Clinch, MT School Services
Roger McGlenn, Independent Insurance Agents Association of Montana
Don Allen, Montana Association of Insurance & Financial Providers
Bob Worthington, MMIA
Harold Blattie, Montana Assoc. of Counties

Informational Witnesses: Mike Halligan, Washington Corporation
Allen Hall, Employee Benefit Management Services in Billings

Opening Statement by Sponsor:

REPRESENTATIVE DAVE LEWIS, HD 55, Helena, said this is a prompt pay bill for insurance claims. He said this bill is to try and help small businesses to get paid in a more prompt manner. He said what he wanted originally was to take care of people who had small body shops and windshield repair, etc. He passed out an

amendment EXHIBIT(bus57a01). He stated this law would bring them into consistency with other states.

Proponents' Testimony:

John Morrison, State Auditor and Commissioner of Insurance, turned in testimony in favor of HB 130 EXHIBIT(bus57a02). He discussed the bill and passed out some proposed amendments EXHIBIT(bus57a03). He passed out two letters of support from the National Assoc. of Insurance Commissioners and the University of Montana Law School EXHIBIT(bus57a04) and EXHIBIT(bus57a05). He also passed out prompt pay statutes and regulations after the hearing EXHIBIT(bus57a21).

{Tape: 1; Side: A; Counter: 25.9}

Betty Beverly, MT Senior Citizen's Association, said in February of last year they lost their home to a fire. She said two years prior to that they lost their garage to a fire. She said the claim for her garage was settled within three months and they were rebuilding. She said they contacted Western State's Insurance and an adjustor came out after their home burned. She said they had to buy clothes in February, they had to decide where to live and list all the things they had lost, etc. for the insurance company. She said it took until October 31st to settle this claim, which was over 6 months.

Donald Miller, Supervisor of Patient Accounts for St. Patrick Hospital, turned in testimony in favor of HB 130.
EXHIBIT(bus57a06)

{Tape: 1; Side: B; Counter: 6.5}

Mary Williams, Capital City Task Force for AARP, turned in testimony on behalf of Pat Callbeck Harper, AARP.
EXHIBIT(bus57a07)

Bob Olsen, MHA, said medical providers have spent the last two years discussing health care costs as they continue to see them rise, premiums are going up and people are losing insurance. He said this bill is an attempt to change the way business is done and to reduce cost. He said they are not asking insurance companies to pay bills that they don't owe, and it is not their intention to keep insurance companies from having the time to judicate those claims and make sure the person is covered and the service and payment amount is appropriate. He said all of their accounts receivable they finance. He said if they can reduce the amount that they have invested in non-earning assets there would be lower costs, etc.

Mike Foster, Three Sisters of Charities Hospitals in Montana, said there are often times delay in the payment of legitimate claims. He said hospitals are going through tough times and this bill will allow the hospitals to get this money in a timely manner. He said there is flexibility built into section 2 for the insurance companies and this bill is a fairness issue. He turned in a letter of support from St. Vincent Healthcare.
EXHIBIT(bus57a08)

Pat Melby, Montana Medical Association, said Montana has had a prompt pay law for many years but never had any enforcement of it. He urged the committee to keep the amendments that were suggested by the State Auditor's Office.
Jani McCall, Billings Clinic, said they would like consumer piece of mind and this would help the health care industry as far as cash flow goes, etc. She said they are in support of the amendments from the Auditor's Office.

Claudia Clifford, State Auditor's Office, handed out a letter of support from Brenda Weist. EXHIBIT(bus57a09)

{Tape: 1; Side: B; Counter: 15.1}

Opponents' Testimony:

Tanya Ask, Blue Cross Blue Shield of Montana, turned in testimony in opposition of HB 130. EXHIBIT(bus57a10) She said the amendments that the Auditor's Office proposed does clear up some of their concerns but page 2, lines 20-24, is a concern. She said if they have to pay interest on a mistake that they have made and they do it voluntarily, they would be admitting to an unfair trade practice.

{Tape: 1; Side: B; Counter: 21.5}

Frank Cote, Health Insurance Assoc of America, discussed their claim forms. He said section 1, subsection 2 of the bill could literally mean that a cocktail napkin could now be used. He used the example of a claim form that came into an insurance company and it was a prescription pad that was used to prescribe a hot tub and that person bought the hot tub and filed the claim. He said the claim was denied and it became a complaint in the State Auditor's Office. He said between his company and Blue Cross/Blue Shield they process over 3 Million claims and when there are only 114 complaints in the Auditors office this is nothing. He used the example of an in-patient facility in Butte that submitted a \$100,000 in-patient claim for a person that had been there for four months and the insurance company had no idea they were in that facility. He said this could create problems for insurance companies when they are renewing policies, etc. He said they also have rules that if the claim is submitted six months after service the claim is denied. He discussed a survey from HIAA on Claims and Payment Processes. EXHIBIT(bus57a11)

Denise Pizzini, New West Health Services, said it was mentioned that the health care industry is in crisis with cash flow, etc. and she does not deny that. However, she felt the crisis would not be fixed by unreasonably placing a burden for cash flow for hospitals on health care payers. She said there should be the determination that claims are not being processes or that delay tactics are happening before they make the decision that a statute is needed to make payers pay claims more quickly. She explained the claims that New West had processed in 2001 and 2002. She stated that claims frequently take longer than 30 days to process because additional information is required to determine coverage, medical necessity, appropriateness of care, and other reviews to determine liability for a claim. She said this is a good idea so that they make sure they are only paying claims that they are liable for. She felt that the current comp. pay bill needed to be looked at closely. She said the current comp. pay statute requires a finding by the department and it needs to be of misconduct by an insurer before they have violated the statute. She said this bill could lead to more litigation in the area of unreasonable and reasonableness. She said 95 percent of their claims are paid within 30 days and this is not a way to try and fix health care issues, etc.

{Tape: 2; Side: A; Counter: 5.7}

Greg Van Horssen, State Farm, said this bill is a vast expansion on the law to the prompt pay issue and applies to property, casualty, life insurance, etc. He said it would require an

insurance company to pay any claims made within 60 days or suffer the threat of 18 percent interest, administrative action and litigation. He said this creates an immediate conflict for the insurance company as often times these claims are complicated. He said an insurance company will pay only those claims that are legitimate and they investigate all claims to make sure the amount is accurate, etc. He said the insurance company also would represent the insurer against any claims that are based upon a fraudulent, inflated or unnecessary claim. He said this bill would inhibit the insurance's ability to thoroughly investigate questionable claims, etc. He said companies may pay claims to avoid the fines and penalties and then they lose the right to defend the insurer, etc. He felt that investigation on claims is important and fair for the insurer.

Randy Nelson, Mountain West Farm Bureau Insurance Co., said there are many claims that the property and casualty companies get that are not legitimate. He said this legislation will prohibit the property and casualty industry from doing the work that it needs to sort out what claims should be paid and what should not. He turned in a report of verdicts from district court.

EXHIBIT(bus57a12)

He said these fraudulent findings took almost a year and this is a problem that goes on all the time. He said there are many people who find ways to file fraudulent claims and the insurance company needs the time to find those claims. He discussed some examples of previous claims and problems that they have had.

{Tape: 2; Side: A; Counter: 19.6}

Jacqueline Lenmark, American Council of Life Insurers, said she is also speaking on behalf of Sue Weingartner, Alliance of American Insurers. She passed out some highlighted statutes pertaining to her testimony, EXHIBIT(bus57a13)

EXHIBIT(bus57a14) EXHIBIT(bus57a15) She said this bill has a sweeping change in the law that will have a detrimental effect on the property, casualty and life insurance industry. She said it is amazing that the hospitals stand in such strong support of this because they insure the slips and falls that happen in their lobbies, etc. She said they also insure their medical malpractice claims and this bill will inhibit the defense of those claims. She said it appears that there has been an attempt to exclude worker's compensation from this bill and she felt that had not been done. She discussed page 1, line 29. She said they have researched other states and none of them have enacted legislation this way. She discussed how much their company has paid out in claims. She also discussed the percentages of the total claims that had not been paid in a timely manner for life insurance,

property and casualty. She passed out some amendments that they would prefer for the bill. EXHIBIT(bus57a16)

Stan Kaleczyc, Burlington Northern Sante Fe, rose in opposition of the bill.

Aiden Myhre, Montana Chamber of Commerce, said they represent the business side of this and feel it is a fairness issue.

Jon Metropoulos, National Assoc. of Independent Insurers and Farmers Insurance Group, said few bills get stronger opposition for discipline and said this bill should be tabled.

Tom Clinch, MT School Services, turned in testimony in opposition to HB 130. EXHIBIT(bus57a17)

Roger McGlenn, Independent Insurance Agents Assoc. of Montana, passed out two letter of opposition to HB 130. EXHIBIT(bus57a18)
EXHIBIT(bus57a19)

Don Allen, Montana Association of Insurance and Financial Providers, rose in opposition.

Bob Worthington, MMIA, said this bill is bad business for the state.

Harold Blattie, Montana Assoc. of Counties, felt this bill would affect counties and rose in opposition.

{Tape: 2; Side: B; Counter: 0.2}

Informational Witnesses:

Mike Halligan, Washington Corporation, said they have concern with the federal employers liability act. He said all of their health benefit programs include wellness programs that are part of the collective bargaining agreements. He said there are time frames established in those wellness programs and he did not know how that would be dealt with in the prompt pay statutes. He said the investigatory protocols for health related issues or a life insurance claim or property claims are vastly different. He felt maybe this should be an interim study.

Allen Hall, Employee Benefit Management Services in Billings, said they are a third party administrator of health care claims. He said self-funded plans under employee retirement income security act of 1974 already have a prompt pay provision. He offered an amendment that would eliminate third party administrators. EXHIBIT(bus57a20)

Questions from Committee Members and Responses:

SENATOR KELLY GEBHARDT asked what a clean claim is. Mr. Miller said it comes under the Medicare law and doesn't require additional investigation for third party liability, etc.

SEN. GEBHARDT asked about the 18 percent and would the bill be more pleasing if it was reduced to 12 percent, etc. Mr. Van Horssen said no, this bill still renders them unable to fully investigate, etc. SEN. GEBHARDT wondered if 45 days would be more acceptable than 30 days. Mr. Van Horssen said the law in Montana already requires insurance companies to pay bills promptly. He said to create strict time frames would not help the problems that this bill causes.

SENATOR SHERM ANDERSON asked about the new federal law dealing with health care. Mr. Morrison said he is familiar with it and there are new regulations that are more stringent than what they are proposing here, but this bill is consistent with federal law.

SEN. ANDERSON asked if there would be any need to include health care providers in this bill. Mr. Morrison felt it was critical that they address all insurance claims and how they are handled.

SEN. ANDERSON asked if the number of claims that they receive complaints on is very small compared to the overall picture of all claims. Mr. Morrison said yes it is small percentage of all the claims that are handled, but the great percentage of the claims are handled according to all the provisions in the insurance code. He said some people have a complaint or problem with their insurance company, but they don't file a written complaint with the State Auditor's Office.

SEN. ANDERSON asked with the amount of complaints that they have received are they historically mostly from one insurer or is it from a multitude of insurers etc. Rosanne Grandy, State Auditor's Office, said there is not one specific company that they have had a tremendous amount of problems with. She said there are a couple of companies that are worse than others but for the most part it is spread out. SEN. ANDERSON asked if there are more in one group or the other such as life insurance, etc. Ms. Grandy said she only broke it out into the two groups with one being life and health where there were 114 and the other was property and casualty with 160.

SENATOR VICKI COCCHIARELLA asked how many of those complaints are legitimate. Ms. Grandy said she would have to go through and count them.

SENATOR GLENN ROUSH said there was a lot of testimony about fraudulent claims, etc. and would this bill allow a company to investigate a claim outside the 30 and 60 days. Mr. Morrison said this bill does not require insurance companies to pay claims in 60 days. He said it requires them to send a note to the claimant saying why they can't pay the claim. He said it does not force any company to pay a claim that they already have to pay but says that they cannot unreasonably delay. He said if the committee sees fit, he felt this bill could be limited to first party and not third party.

SENATOR KEN HANSEN asked about the bad faith law. Mr. Nelson said the property casualty insurance in this state faces the strictest extra contractual liability laws of any state in the nation. He said where a claim is reasonably cleared in liability; the insurance company has an obligation to promptly pay the fair and equitable value of that claim. He said the insurance company must identify its reasons for denying a claim or any part of it and under which portion of the policy in which they are doing so. He said if it fails to, they might be subjected to an entirely separate lawsuit including a claim for punitive damages. He said in addition to the bad faith law if in a claim the claimant believes that the insurance company immediately owes the medical bills they can file a declaratory action. He felt there are horrible constitutional problems and due process problems with that.

SEN. HANSEN asked about the bad faith law. Mr. Morrison said the unfair claims settlement practice act is a model act that exists in one form or another in every state in America. He said a majority of the states also provide private bad faith actions based upon the unfair claims settlement act. He said Montana has a third party bad faith cause of action. He said if an insurer has a reasonable basis in fact or law for denying the claim that is a complete defense.

{Tape: 2; Side: B; Counter: 22.6}

SENATOR DON RYAN said clinics are having more of a problem getting paid by Medicaid in a timely manner than with the other providers and is this happening in other hospitals. Mr. Foster said he did not know for sure. Mr. Miller said they have not found that they are delaying the payment, but it is low.

SEN. RYAN asked about the comp. payments in this state. Ms. Lenmark said 33-18-201 is model language that has been enacted in most states and many states do authorize third party lawsuits for

bad faith against insurance companies. She said third party is the person who gets sued if the insurance company does not pay. She said they are the only state in the nation that has that cause of action in statute. She said a person cannot just sue on one act of bad faith.

SEN. RYAN asked the Insurance Commissioner to respond. Mr. Morrison said the bad faith issues that are being talked about have nothing to do with this bill. He said section 242 is the statutory bad faith section and the insurance code applies to section 201. SEN. RYAN said if someone fell on the ice on his property and they were going to sue him would they have to pay within 30 days. Mr. Morrison said no that claim would not have to be paid but the insurer would have to write for more information, etc. and at the end of 60 days they would have to say that they were not prepared to pay and state why. SEN. RYAN asked what is the avenue for a denied claim. Mr. Morrison said there is language already in place that says if they are going to deny a claim it has to be reasonable.

SEN. ROUSH said once the claim is paid to the client is the liability issue for the insurance company taken care of. Mr. Morrison said that is a legal question that this bill does not reach. He said there are other laws that deal with those issues.

SENATOR MIKE SPRAGUE said they have been discussing auto, health, and worker's comp. etc. and he felt each have a different remedy. He felt this bill is trying to deal with delay and he wondered how many people bring their complaints to a legal standpoint. Mr. Morrison said this bill does not cover worker's comp. He said a small percentage of people go ahead and contact the insurance company and even a smaller number file a lawsuit against the insurance company. He said a small number of claims are mishandled and a small number do go to litigation. SEN. SPRAGUE asked what is the remedy for fraud on a claim, etc. Mr. Morrison said fraud does happen and they have policies to prosecute and the remedies are criminal because they don't have the money for the insurance company to recover. He said in this bill if the insurance company feels insurance fraud is happening that is one of the reasons that they can state why they are not paying the claim. SEN. SPRAGUE asked if a hospital cannot deny a person medical care. Mr. Morrison said that is true, but there is also a federal bill that is called non-dumping responsibilities in hospitals. SEN. SPRAGUE asked if a hospital treats someone and if there is no insurance is the hospital with out that money. Mr. Morrison said that is correct.

SEN. SPRAGUE said if there was \$100 Million of uninsured medical treatment how much is there still on the books of those people who have insurance but are waiting to get paid, etc. Mr. Miller said he did not have statistics on that because they don't receive anything back from the insurance company that says it is being disputed, etc. SEN. SPRAGUE asked how much is on their books that is in the gray area of being litigated, disputed, etc. Mr. Miller felt it was around 5 percent.

{Tape: 3; Side: A; Counter: 10.4}

SEN. RYAN asked if there is public information on the companies that have complaints against them, etc. Mr. Morrison said that information is available on the consumer information source website. He said that information has been there since 2001 and it tells a consumer how many complaints have been filed, etc.

Closing by Sponsor:

REP. LEWIS closed.

HEARING ON HB 182

Sponsor: REPRESENTATIVE ALLEN ROME

Proponents: Mark Simonich, Department of Commerce

Opponents: NONE

Informational Witnesses: Kevin Braun, Department of Labor and Industry

Opening Statement by Sponsor:

REPRESENTATIVE ALLEN ROME, HD 56, Garrison, said this is a clean up bill for the Department of Commerce when it was reorganized in 2001. He discussed the changes in the bill.

{Tape: 3; Side: A; Counter: 17.4}

Proponents' Testimony:

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR**

Call to Order: By **CHAIRMAN DALE MAHLUM**, on March 26, 2003 at 9 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused:

Sen. Bob Keenan (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 474, 3/4/2003; HB 230,
3/4/2003; HB 525, 3/4/2003
Executive Action: HB 230, HB 474, HB 230, HB 130

EXECUTIVE ACTION ON HB 130

Motion: SEN. ANDERSON moved the amendments for HB 130, EXHIBIT (bus64a08) (HB013007.aem) .

Discussion:

Eddye McClure, Legislative Staffer, explained the Gray Bill, EXHIBIT (bus64a09)

CHAIRMAN DALE MAHLUM asked the sub-committee if they had anything to add. **SEN. SHERM ANDERSON** commented that the interested entities worked hard on the bill and they came to a consensus. He said basically they added all the amendments that the sponsor asked for.

SEN. VICKI COCCHIARELLA said she hoped new section 4 was not going to send a message to insurers that now the only thing they have to pay in a timely manner was the \$2500 or less. She felt they were addressing one or two insurers that abuse their small businesses in Montana and she hopes this will work. She said she hopes they are not encouraging delayed or non-payment on their larger claims.

Vote: Motion carried 8-2 with SEN. COCCHIARELLA AND HANSEN voting no on the amendments.

Motion: SEN. GEBHARDT moved HB 130 BE CONCURRED IN AS AMENDED.

Vote: Motion carried 9-1 with SEN. COCCHIARELLA voting no.